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CIRCUIT COURT OF FREDERICK COUNTY.

EDITH C. JOLLIFFE V. FRANK H. JOLLIFFE.

1. EQUITY JURISDICTION—*Independent suit for alimony—Prayer of bill.* An independent suit for alimony lies in equity, and the court has jurisdiction to decree the same although there is no prayer in the bill for a divorce and no jurisdiction in the courts of this State to grant the complainant a divorce.
2. EQUITY JURISDICTION—*Attachments—Fraudulent conveyances—Residence—Marriage and breach of marital duty.* Such a suit is not controlled by the statute applicable to divorce suits as to residence of the parties. Equity has jurisdiction for the purposes of attachment and to set aside fraudulent conveyances, although neither party is a resident of this State, and the marriage and cohabitation was in another State and the breach of the marital duty is alleged to have occurred in another State.
3. EQUITY JURISDICTION—*Suit for divorce—Suit for alimony.* A suit for divorce is a suit to end the marital relation in whole or in part. A suit for alimony proper is to enforce the obligations incident to the continuance of the relation, and although similar inquiries arise in both suits, it is neither in form or substance a suit for a divorce.
4. EQUITY JURISDICTION—*Suit for alimony, subsequent suit for divorce in another State.* The jurisdiction of the court will not be ousted by the fact that subsequent to its institution the defendant filed in a California court his suit for divorce, and in her answer the plaintiff asked for alimony. *Davis v. Morris*, 76 Va. 21.

Suit for alimony. Defendant filed a demurrer upon the ground that the court was without jurisdiction, and the court overruled the demurrer. Defendant filed his plea averring that since the institution of this suit, he had brought suit for divorce in California, and in her answer in that Court defendant had prayed alimony. Court sustained demurrer to plea.

R. M. Ward, for plaintiff.

R. E. Byrd and Warren Rice, for defendant.

HON. THOS. W. HARRISON, Judge.

At October Rules, 1902, complainant filed her bill against defendant, and the bill having been set for hearing the defendant has filed his demurrer thereto, assigning as ground therefor that the courts of this State are without jurisdiction.

The allegations of the bill material to notice upon this hearing are:

Plaintiff married defendant in *Baltimore* on October 1, 1896.

In February, 1899, in the city of Washington she left him with his consent to return to her parents. The facts averred in regard to this are that they had resided but a few months in Washington; that he had failed and refused to support her and that he had contracted a contagious disease by his misconduct.

He enlisted in the army for three years, was stationed at Fortress Monroe, upon the expiration of his term in May, 1902, he acquired a legal residence in Frederick county, Va., and then left for California with intent to abandon and desert his wife, and he refused to provide for her maintenance and support.

He owned real estate in Frederick county, which he had conveyed to James G. Whetzell, a resident of said county, with the fraudulent purpose and intent of putting same out of reach of his wife's demands for maintenance and support.

The prayer of the bill is that complainant be allowed a support out of her husband's property and to that end the fraudulent deeds be set aside.

The demurrer of defendant admits these facts to be true, but contends that this court is without jurisdiction to afford relief to the wronged wife.

If this were a suit for a divorce this court would be without jurisdiction, for our statute requires that one of the parties should be domiciled within the State for one year previous to the institution of the suit. This must be averred and proved in every divorce proceeding as a jurisdictional fact. Such a requirement is both wise and just. Each State has its own law for the annulment of the marriage state, and what is ground for a divorce in one State may not be a ground in another. If parties without acquiring residence in the State in which they seek divorce could look over the field and seek the courts of the State in which the divorce laws are most lax, the policy of the State of their residence would simply be overturned and the laws intended to secure the stability of the marriage relation be repealed. Every State, therefore, only grants divorces to or against citizens of its own. The several State laws differ in regard to the length of residence required, but each State has some requirement in this respect as an evidence of the good faith of

the parties in their intention of becoming citizens. In this State it is one year. The applications for divorce have distressingly increased in every court in every State in the Union and I have adopted the policy of insisting upon the strictest conformity with every requirement of the law. Were this a divorce proceeding I would consider the allegations of the bill insufficient. The only allegations of residence is that the defendant was stationed at Fort Monroe for three years, and that in the necessarily brief period between the termination of his enlistment and his departure for California he acquired a legal residence in Frederick county. No length of time a soldier may be stationed in a State gives him a domicile therein, and his stay in Frederick county could not have been for a year, even if the vague averment that he had acquired a legal residence therein would have been sufficient. I do not know what the pleader means by the averment that defendant had acquired a legal residence, as it seems rather the averment of a conclusion of law than of fact. There is no pretense that the plaintiff is or ever has been a resident of this State. The parties are non-residents. The marriage was in Maryland, and the desertion in a foreign jurisdiction. It becomes, therefore, necessary to consider whether this application for maintenance out of the husband's property is divorce proceeding in substance.

Mr. Bishop, the most eminent text writer on the subject, supported by a formidable array of authority, contends that it is; on the other hand, two decisions of our own Appellate Court, rendered it is true many years ago, but which have been generally accepted by our text writers as the law, have taken the opposite view. *Purcell v. Purcell*, 4 H. and M. 507; *Almond v. Almond*, 4 Rand. 662. Our statutes refer to alimony only in connection with divorce. The law, therefore, is not altogether free from doubt. The argument is, that no court will grant a separate support for the wife without sanctioning her separation from him, and to sanction this is in fact to grant her a divorce.

The place for a wife is in her husband's home, and no court will provide a home elsewhere out of the husband's property unless his conduct compels it. To provide her a home and a support other than with her husband is in fact to grant her a divorce. Such is Mr. Bishop's argument. According to my conception, in which I think I am sustained by Virginia authority, Mr. Bishop's argument

is fallacious, in that he overlooks the distinction between ending the relation and enforcing the obligations incident to it, which involve it is true the same inquiry, namely, the conduct of the husband. Both involve provisions for the wife, for the natural concomitant of a divorce to a wife is a provision for her maintenance. But a divorce is something more than a provision for her support. It more or less terminates the marital relation and this in a suit for alimony only is not contemplated. Even in a divorce from bed and board only, while the bond of matrimony is not wholly dissolved, still the relation is materially changed. In a suit for separate support there is no change in the relation of the parties. I do not see why an injured wife should be compelled to ask a divorce, as the price of a support, if she does not desire to do so. There are many good and religious women, who have conscientious scruples in regard to the right of courts to grant divorces. Since I have been on the bench I heard a case in which this was forcibly brought to my attention. In the instance I have reference to, neither the brutality of the husband could coerce, nor his money bribe the injured woman, either to ask or consent to a divorce. Should a woman having similar religious views be denied a support from the husband? It would be a great blot on our jurisprudence if it were true.

Every court recognizes the obligation of a husband to lead a clean life, and to support his wife according to his ability. If he don't lead a clean life, she may leave him, without forfeiting her rights to maintenance. If he won't maintain her, the court should be open to her to come for such relief as she thinks best. She should have it by the court, whose elastic remedies are best calculated to do her adequate justice, and without imposing upon her the condition that she should apply for a divorce. A court of law recognizes the obligation and enforces it in its cumbersome and oblique way. A husband can be compelled to pay a third person who furnishes necessaries to a wife, and the court of law will make all necessary inquiries into the domestic life of the parties. But this is an exceedingly round about way for the wife to get her rights, and the court of equity is the proper tribunal to make the necessary inquiries once for all and a decree directly in favor of the wife for a regular and proper allowance. In the States in which the jurisdiction has been denied it has been on the ground that the

jurisdiction originally was in the ecclesiastical courts and that the equity jurisdiction when transplanted in this country did not bring with it this jurisdiction, and as there were no ecclesiastical courts the wife had no remedy. Statutes in these States were promptly passed correcting the evil. In our State early in its history our appellate court boldly took the ground that as there was no remedy elsewhere a court of equity would furnish it.

I have satisfied myself at least, that a suit for alimony is not a suit in form or substance a suit for a divorce, however closely allied the two frequently are. There is, therefore, no statute imposing residence for a year as a condition precedent to its entertainment. The court is not undertaking to dissolve a marriage of another State, it is undertaking to enforce the obligations which that relation imposes. Considerable argument has been addressed to the court as to the difficulties in reaching a proper conclusion. If there are difficulties, it is no reason why the court should abandon the field. If the husband is entitled to be relieved of his marital obligations let him seek a divorce in the courts of the State that can consider his application. If the allegations of the bill are true, and by the demurrer they are admitted, what guarantee is there, if the wife seeks him in California, he will then be there. A Maryland court could not interfere with his dispositions of his real estate in this State. So that this court, with the defendant before it, admitting that he has violated his marital duty and abandoned his wife, and that he is making fraudulent disposition of his property so as to put it out of the reach of his wife, if she finally finds a court to entertain her plea and grant her redress, is asked to pronounce itself helpless, and turn the wife out of court. I think both the attachment against the real estate and the fraudulent conveyance furnish sufficient occasion to invoke the power of the court, and by decree the court can fix the allowance of the wife until the husband returns to his duty or until he is relieved therefrom, either by divorce or by her own misconduct, and to this end the court can make all necessary inquiries even though they be along the same line as in a divorce proceeding of which it is without jurisdiction. I therefore overrule the demurrer.